

## REMARKS

### **I. Status of Claims**

“Claims 1-22 are allowed.” *See Examiner’s Final Office Action* p. 4 (01 November 2006). “Claims 23-30, 32 and 36-44 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 22-29, 33 and 35-43 of prior U.S. Patent No. 6,967,780.” *See Examiner’s Final Office Action* p. 2 (01 November 2006).

Claims 23-30, and 36-44 have been cancelled by amendment herein. Claim 32 has been noted to depend from indicated-allowable Claim 31, rewritten in independent form (see following), and hence is believed to be allowable for at least the reason of such dependency.

Dependent “Claims 31 and 33-35 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,967,780.” *See Examiner’s Final Office Action* p. 3 (01 November 2006). Examiner has stated that the “terminal disclaimer filed on 8-11-06 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent 6,967,780 has been reviewed and is accepted.” *See Examiner’s Final Office Action* p. 2 (01 November 2006) (emphasis added). Examiner has stated “a timely filed terminal disclaimer in compliance with 37 CFR 1.321(6) "or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.” *Id.* p. 3 (emphasis added). Hence, it would appear that the nonstatutory obviousness-type double patenting rejections have been obviated by the previously filed terminal disclaimer, subject to the clarifying amendments detailed following.

Claim 31 has been herein rewritten in independent form, and Dependent Claims 32-35 have been noted to depend either directly or indirectly from Independent Claim 31. As set forth above Examiner has indicated that the previously-filed and accepted terminal disclaimer obviated all obvious-type double patenting rejections in the present case. Accordingly, Applicant respectfully requests that Examiner withdraw his non-statutory double patenting rejections of herein-amended Claims 31-35 and issue a Notice of Allowance/Allowability of same.

New Independent Claim 53 has been constructed to track Dependent Claim 33 rewritten in independent form, and new Dependent Claims 54-55 depend from new Independent Claim 53 (Dependent Claim 33 in independent form). As set forth above Examiner has indicated that the previously-filed and accepted terminal disclaimer obviated all obvious-type double patenting rejections in the present case. Accordingly, Applicant respectfully requests that Examiner issue a Notice of Allowance/Allowability of New Claims 53-55.

New Independent Claim 56 has been constructed to track Dependent Claim 35 rewritten in independent form, and new Dependent Claims 57-58 depend from new Independent Claim 56 (Dependent Claim 35 in independent form). As set forth above Examiner has indicated that the previously-filed and accepted terminal disclaimer obviated all obvious-type double patenting rejections in the present case. Accordingly, Applicant respectfully requests that Examiner issue a Notice of Allowance/Allowability of New Claims 56-58.

#### **IV. Claims Herein Cancelled/Amended in Response to Examiner for Reasons Tangential to Patentability; No Waiver is Intended, and All Legal/Factual Rights and/or Positions are Reserved**

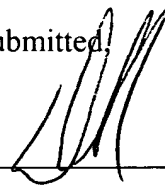
Applicant has herein cancelled and/or amended one or more claims. Applicant does not consider the art of record to render the previously unamended/uncancelled claims unpatentable under post-issuance claim interpretation rules, but has amended herein at least in part because the PTO is not bound by post-issuance claim interpretation rules. Accordingly, Applicant considers all cancellations/amendments herein to be tangential to patentability.

Insofar as the Applicant has herein amended/cancelled claims sufficient to obtain a Notice of Allowability of all claims pending, Applicant has not herein explicitly addressed every rejection and/or statement in Examiner's Final Office Action. The fact that rejections and/or statements are not herein explicitly addressed should NOT be taken as an admission of any sort, and Applicant hereby reserves any and all rights to contest such rejections and/or statements at a later time. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended (e.g., with respect to those facts of which Examiner took Official Notice Applicant hereby contests those facts and requests express documentary proof of such facts at such time at which such facts may become relevant). Furthermore, although not expressly set forth herein, Applicant continues to assert all points of any previous Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended.

With respect to any cancelled claims, such cancelled claims were and continue to be a part of the original and/or present patent application(s). The Applicant Entity (hereafter "Applicant"), hereby reserves all rights to present any cancelled claim or claims for examination at a later time in this or another application. Applicant hereby gives public notice that the cancelled claims are still to be considered as present in both the original and/or present patent application for all appropriate purposes (e.g., written description and/or enablement). Applicant does NOT intend to dedicate the subject matter of the cancelled claims to the public.

The Examiner is encouraged to contact the undersigned by telephone at (425) 467-2260 to discuss the above and any other matters, if desired. Also, if the Examiner notes any informalities in the claims, he is encouraged to contact the undersigned to expediently correct such informalities.

Respectfully submitted,



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DRC:jmb

Enclosures:

- Postcard
- Check
- Post-Filing Transmittal (+ copy)
- Petition for Extension of Time (+ 2 copies)

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